



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 90**

**[WT Docket No. 02-55; FCC 19-108]**

**Improving Public Safety Communications in the 800 MHz Band**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document the Commission takes steps to streamline our rules and procedures to accelerate the successful conclusion of the Commission's 800 MHz band reconfiguration program, or rebanding. The document seeks comment on the proposed rule deletions.

**DATES:** Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 02-55, by any of the following methods:

- Federal Communications Commission's Web site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-1428.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in WT Docket No. 02-55, FCC 19-108, released on October 28, 2019.

The complete text of this document is available for download at

[http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/). The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## **Synopsis**

1. In the Notice of Proposed Rulemaking (*NPRM*), the Commission, recognizing that it has determined that Sprint did not reap an economic windfall from the spectrum award that Sprint received in exchange for undertaking the financial obligation to support 800 MHz rebanding, proposes eliminating the rule that requires an annual auditing of Sprint's rebanding expenditures by the 800 MHz Transition Administrator. The *NPRM* seeks comment on proposed procedures for eliminating the requirement that each rebanding agreement be reviewed and approved by the 800 MHz Transition Administrator.

2. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments in WT Docket No. 02-55 on or before

the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to  
445 12<sup>th</sup> Street, SW, Washington DC 20554.

*Accessible Formats:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

3. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to § 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816 (1998), Order on Reconsideration, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. See 47 CFR 0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

4. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that

memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Section 1.1206(b). In proceedings governed by Section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

## **PROCEDURAL MATTERS**

### **A. Initial Regulatory Flexibility Analysis**

5. The Initial Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix B of the *NPRM*.

6. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (*NPRM*). Written public comments are

requested on this IRFA. Comments must be filed by the same dates as listed on the first page of the *NPRM* and must have a separate and distinct heading designating them as responses to this IRFA. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.

**B. Need for, and Objectives of, the Proposed Rules**

7. The Commission initiates this rulemaking proceeding to seek comment on certain proposals designed to improve the efficiency of the 800 MHz band reconfiguration process set out in the 800 MHz Report and Order, and to advance the conclusion the rebanding process. The Commission initiated the 800 MHz rebanding program to alleviate harmful interference to 800 MHz public safety radio systems caused by their proximity in the band to the 800 MHz commercial cellular system operated by Sprint Corporation (Sprint). To increase the spectral separation between Sprint and public safety, Sprint was required to relocate its system to spectrum at the upper end of the band and public safety licensees were relocated to the lower end of the band. Sprint was also required to pay the accumulated relocation costs of public safety licensees as well as its own relocation costs, and in exchange Sprint received a separate block of spectrum outside of the 800 MHz band from the Commission. At the outset of the rebanding program, the Commission imposed an “anti-windfall” obligation on Sprint to ensure that Sprint did not reap an economic windfall from the spectrum award that Sprint received in exchange for undertaking the financial obligation to support 800 MHz rebanding.

8. In the Order the Commission eliminates certain obligations imposed on the 800 MHz Transition Administrator which are no longer necessary in light of the Public Safety and Homeland Security Bureau’s order determining that Sprint no longer is responsible for making a

windfall payment to the Treasury. The changes apply to 800 MHz licensees that either (a) have not completed the rebanding process; or (b) having completed the rebanding process have not fulfilled the contract-closing obligations imposed on them by the Commission's rules and their Frequency Reconfiguration Agreements (FRAs) with Sprint. The changes make relatively small adjustments to the policies that affect 800 MHz Private Land Mobile Radio (PLMR) licensees. Additionally, the changes will also apply to the 800 MHz Transition Administrator and Sprint, which as discussed below are not small entities for purposes of the RFA.

9. The Commission tentatively concludes that the changes proposed in the Sixth FNPRM are necessary to accelerate the conclusion of the rebanding proceeding initiated in 2002, thereby lessening the logistic and economic burdens that certain procedures impose on the Commission, the 800 MHz Transition Administrator and Sprint. The Commission's objectives are to improve the rebanding process now that certain procedures no longer are necessary and confer no benefit on the parties to 800 MHz rebanding.

#### **C. Legal Basis**

10. The proposed action is authorized under pursuant sections 4(i),4(j), 301, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i),154(j), 301, 303, and 403.

#### **D. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

11. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small business" has the

same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

12. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

13. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

14. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county , municipal and town or township ) with populations of less than 50,000 and 12,184 Special



purpose governments (independent school districts and special districts ) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

15. Public Safety Radio Licensees. As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small.

16. Private Land Mobile Radio Licensees. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses

business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

17. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users. Of this number there are a total of approximately 3,174 PLMR licenses in the 4.9 GHz band; 29,187 PLMR licenses in the 800 MHz band; and 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz. The Commission does not require PLMR licensees to disclose information about number of employees and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

18. Specialized Mobile Radio Licenses. The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995 and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard

won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997 and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

19. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the \$15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

20. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

21. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

22. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

23. The requirements that the Commission proposes to eliminate in the Sixth FNPRM will not impose new or additional reporting, recordkeeping, or other compliance obligations on a substantial number of small entities. Nor will small entities be required to hire attorneys, engineers, consultants, or other professionals to comply with the proposed rule change, if adopted. Small entities that are 800 MHz licensees participating in the rebanding program who have negotiated FRAs with Sprint will no longer be required to have any costs/payments covered in the FRA or in any FRA amendments pre-approved by the TA which should yield them the benefit of faster completion of their rebanding process requirement.

**F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

24. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.

25. The *NPRM* is deregulatory in nature and will not have a significant economic impact on a substantial number of small entities. As mentioned above small entities should benefit the proposed rule elimination with faster completion of their rebanding process. Faster

completion should result in cost savings for such entities. The alternative of continuing to require a pre-approval requirement which is no longer needed would impose unnecessary burdens on and would not further or facilitate prompt completion of the rebanding process. We note in the Sixth FNPRM that we will to continue to require 800 MHz licensees to get pre-approval from the TA for any non-payment related FRA amendments and to have the Bureau address any payment related issues that arise from FRA amendments. However, to assist in the Commission's evaluation of the economic impact on small entities, and to better explore options and alternatives, the Commission has sought comment from the parties on these matters. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and recommendations filed in response to the Sixth FNPRM. proposed rules will not affect any small entities.

**G. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules**

26. None.

**PROCEDURAL MATTERS**

**A. Paperwork Reduction Act of 1995 Analysis**

27. The Notice of Proposed Rulemaking document does not contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

**ORDERING CLAUSES**

28. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 301, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303, and 403,the Notice of Proposed Rulemaking IS HEREBY ADOPTED.

29. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *NPRM* on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**List of Subjects in 47 CFR Part 90**

Radio.

Federal Communications Commission.

**Marlene Dortch,**  
*Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

1. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401-1473.

**§ 90.676 [Amended]**

2. Amend § 90.676 by removing and reserving paragraph (b)(4).

[FR Doc. 2019-24670 Filed: 11/13/2019 8:45 am; Publication Date: 11/14/2019]